A

**RAMAN MARIAPPEN**

**v.**

**PP**

B

HIGH COURT MALAYA, SHAH ALAM
ABANG ISKANDAR JC
[CRIMINAL APPEAL NO: 42-58-2005]
18 NOVEMBER 2008

C

***CRIMINAL LAW:*** *Anti-Corruption Act 1997 - Section 11(a) - Soliciting and accepting RM2,000 as inducement to refrain from taking action against tax payer - Whether prima facie case established - Setting up of trap witnesses and recovery of trap money - Whether corroborative evidence required - Whether delay in delivering grounds of judgment*

D

*prejudiced appellant - Whether sentence of five months imprisonment and fine of RM10,000 in default four months imprisonment manifestly excessive*

***EVIDENCE:*** *Accomplice - Corruption case - Respondent charged under Anti-Corruption Act 1997, s. 11(a) - Whether complainant an accomplice just because he was a trap witness - Whether corroboration required -*

E

*Anti-Corruption Act 1997, s. 44(1)(a)(iii) & s. 44(1)(b)*

***EVIDENCE:*** *Adverse inference - Failure to produce alleged tape recording of corrupt transaction - Whether defence could invoke adverse inference under s. 114(g) Evidence Act 1950 - Quality of recording*

F

*suspect - Defence objecting to admissibility of recording - Whether prosecution properly refrained from tendering recording as exhibit - Whether amounted to suppression of material evidence - Presumption of adverse inference not invoked*

G

***EVIDENCE:*** *Corroboration - Trap witness - Witness taking part in trap set up to arrest appellant - Whether a trap witness - Whether trap witness is an accomplice - Requirement of corroboration of evidence of trap witness - Anti-Corruption Act 1997, s. 44(1)(a)(iii) & s. 44(1)(b)*

H

The appellant was charged under s. 11(a) Anti-Corruption Act 1997 ('ACA97') for accepting a gratification of RM2,000 from the complainant (SP4) for him to restrain from taking action against SP4. The appellant had called on SP4 at his office where SP4 was told that he had about RM60,000 worth of back taxes to pay. The

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appellant told SP4 that SP4 could pay the appellant about RM6,000 to RM10,000 to settle the matter. SP4 then lodged against the appellant. A trap was set and SP4 handed over RM2,000 in marked

money to the appellant. The appellant was convicted and sentenced by the learned Sessions Court Judge ('the SCJ') to five months imprisonment and a fine of RM10,000 in default four months imprisonment. The appellant appealed against the decision and sentence on the grounds that the SCJ had failed to treat SP4 as an accomplice and as such, his evidence needed to be independently corroborated in material particulars. It was submitted that a purported tape-recording (ID19) of the corrupt transaction was not tendered as exhibit and therefore there was no corroboration of SP4's evidence. It was further submitted that the adverse inference under s. 114(g) of the Evidence Act 1950 ('EA50') should be invoked against the prosecution for failure to adduce ID19 as evidence. It was also submitted that there was a failure on the part of the SCJ to judicially appreciate the evidence of the SP4. It was also claimed that the grounds of decision were given by the SCJ 22 months after the decision was handed down.

**Held (dismissing the appeal against both conviction and sentence):**

**(1)** The wording of s. 44(1)(a)(iii) of ACA97 clearly stipulates that no witness shall be regarded as an accomplice by reason only of such witness having, among others, been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence. Howsoever a witness is involved in the commission of a crime under the ACA 1997 he can never be regarded as an accomplice. (para 5)

**(2)** SP4 was not an accomplice and therefore his evidence did not need any corroboration. SP4 was a trap witness as envisaged under s. 44(1)(b) ACA 1997 and by virtue of that provision he ought not to be viewed as unworthy of credit. Read in the context of s. 44(1)(a)(iii) of the ACA 1997 although SP4 was a trap witness, he was not an accomplice. (para 9)

**(3)** ID19 was introduced as an ID but was never tendered on the ground that its quality was suspect and the prosecution therefore appropriately abandoned its attempt to make it as prosecution exhibit. In order for an adverse inference to be drawn against a party, there must be shown evidence of suppression of the material evidence by that party. It was the defence who had objected to its introduction. As such, there was no suppression

of evidence by the prosecution and no presumption of adverse inference presumption against it under s. 114(g) EA50 ought to be invoked. (para 11)

**(4)** The SCJ had amply considered the evidence of SP4 in coming to the finding that the appellant had accepted the money from SP4 in order that he refrained from taking action against SP4. She had made a finding on that fact and there was no reason to disturb her finding as such finding had been supported by evidence. As SP4 was not an accomplice, there was no need for the SCJ to warn herself of the danger of convicting on uncorroborated evidence. (para 11)

**(5)** The judgment had encapsulated the essential features of the case sufficiently. There was no prejudice occasioned by the delay to the appellant. (para 11)

**(6)** A custodial sentence was in order for this kind of offence apart from the imposition of a fine. Under the circumstances the sentence imposed was not manifestly excessive. (para 13)

**Case(s) referred to:**
*Amathevelli R Ramasamy v. PP [2008] 4 CLJ 413 CA* ***(refd)***
*Dato' Hj Azman Mahalan v. PP [2007] 3 CLJ 495 HC* ***(refd)***
*Mohamad Radhi Yaakob v. PP [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC* ***(refd)***
*Munusamy Vengadasalam v. PP [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 SC* ***(refd)***
*Pendakwa Raya lwn. Rahiman Selamat (Rayuan Jenayah No 42A-21-2001) (unreported)* ***(refd)***
*PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC* ***(refd)***
*PP v. Datuk Hj Harun Hj Idris & Ors [1977] 1 LNS 92 HC* ***(refd)***
*PP v. Ma'arif [1969] 1 LNS 134 HC* ***(refd)***
*Tan Hun Wah v. PP & Another Appeal [1994] 2 CLJ 180 SC* ***(refd)***

**Legislation referred to:**
Evidence Act 1950, s. 114(g)
Anti-Corruption Act 1997, ss. 11(a), 42, 44(1)(a)(iii), (1)(b), (2)

*For the appellant - Haresh Mahadevan; M/s Haresh Mahadevan & Co*
*For the prosecution - Roziza Sidek DPP*

*Reported by Amutha Suppayah*

## JUDGMENT

**Abang Iskandar JC:**

**[1]** The appellant had been charged under s. 11(a) Anti-Corruption Act 1997 ('the ACA 1997'), for accepting for himself, as an agent, a gratification of RM2,000 from the complainant for him to restrain from taking action against the said complainant and at the end of the whole trial, he was convicted on the said charge and was sentenced by the learned Sessions Court Judge ('the SCJ') to five months imprisonment and a fine of RM10,000 in default four months imprisonment. He had since appealed against that decision and sentence and had since the date of sentence been granted a stay of execution of the imprisonment term.

**[2]** His appeal was largely premised upon the issue whereby the SCJ had failed to treat the complainant (who appeared as SP4 during the trial), as an accomplice and as such, his evidence therefore needed to be independently corroborated in material particulars. It was also argued quite persuasively before me by learned counsel En. Haresh Mahadevan, that as the purported tape-recording (ID19) of the corrupt transaction was not tendered as the prosecution exhibit, there was therefore no corroboration of the evidence of SP4 and as such, the conviction that was had against his client could not stand. It was also noted by learned counsel that the SCJ's judgment did not indicate that she had so convicted this appellant having warned herself of the danger of convicting based on an uncorroborated evidence of an accomplice.

**[3]** That complaint by this appellant on the status of SP4 as an accomplice and its ensuing ramifications in terms of certain legal obligations in the manner in which his evidence must then be treated would appear in essence, to be the crux of this appeal. If this court were with the appellant on that issue, then this appeal must be allowed. Much emphasis had been relied on by learned counsel on the case of *Dato' Hj Azman Mahalan v. PP* [2007] 3 CLJ 495 a decision by learned Justice Dato' VT Singam J in the Ipoh High Court pertaining to the said issue as to how the evidence of a witness who had participated in a crime of bribery ought to be treated by the court. In the *Dato' Azman Mahalan*'s case *(supra)*, the learned judge had said the following before setting aside the conviction entered against the appellant in that case:

A On the other hand and even assuming that PW1 does not fit under the definition of an accomplice which this court is of the view otherwise, the Learned Sessions Judge ought to have found at least on the totality of the evidence that the conduct and role played by PW1 in the whole episode amounts to dishonesty, trickery and
B tainted with moral turpitude. Accordingly, the Learned Sessions Court Judge ought to have rejected the evidence of PW1 as against both charges as being unreliable or **looked for corroboration as defined in *R v. Baskerville*** ... (emphasis added)

A line of other cases on the need for corroboration of an
C accomplice's evidence was also cited in support by the learned counsel.

**[4]** The learned Ms Deputy Cik Roziza had on the other hand, cited the unreported case of *Pendakwa Raya lwn. Rahiman Selamat* [Dalam Mahkamah Tinggi Malaya, Kuala Lumpur (Rayuan Jenayah
D No. 42A-21-2001)] in reply. I had the advantage of reading the decision by learned Justice Dato Ahmad b. Hj Maarof J (as he then was) in that case where His Lordship, after tracing the long and chartered historical path that had been taken in relation to the
E treatment by the courts of an accomplice's evidence in connection with a trial on a charge involving corruption, had given a literal interpretation to s. 44 ACA 1997 in particular with respect to s. 44(1)(a)(iii) therein, as the language employed in them had been very clear and unambiguous. At the end of his exhaustive
F walkthrough and analysis on the said s. 44 of the ACA 1997 this is what the learned judge had said at p. 59-60 of his judgment in its original language:

Kesimpulannya, hakim bicara kedua mendapati bahawa SP1 adalah rakan sejenayah dan keterangannya perlu disokong sebelum
G Mahkamah dapat menerimanya sebagai keterangan yang kredible. Berdasarkan kepada huraian yang telah saya buat mengenai seksyen 44 APR 1997, keputusan yang dibuat oleh hakim bicara kedua itu adalah tidak betul. Dalam penghakiman saya beliau telah membuat tafsiran yang silap tentang seksyen 44 APR 1997. Saya telah
H menyatakan bahawa perkataan-perkataan *"telah dengan apa-apa cara terlibat dalam perlakuan kesalahan itu atau tahu tentang perlakuan kesalahan itu", yang jelas di bawah seksyen 44(1)(a)(iii) APR 1997 itu, membawa maksud bahawa penglibatan seseorang itu dalam perlakuan itu dengan apa-apa jua sekali pun tidak menjadikannya seseorang rakan sejenayah*. (emphasis added).

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Indeed the learned judge had opined at p. 55 in his judgment as follows:

> Dalam pandangan saya adalah jelas bahawa kini sabitan boleh dibuat atas keterangan rakan sejenayah tanpa Mahkamah perlu mengingatkan dirinya tentang bahaya membuat sabitan atas keterangan rakan sejenayah yang tidak disokong. Ertinya, kaedah amalan dan prudence mengenai warning yang telah diikuti sebegitu lama itu tidak lagi perlu diikuti. *Pada hemat saya kesimpulannya ialah - keterangan seorang rakan sejenayah, kini tiada bezanya dengan keterangan saksi-saksi biasa yang lain. Pada hemat saya inilah niat pembuat undang-undang mengwujudkan peruntukan di bawah seksyen 44(1)(a)(iii) dan seksyen 44(2) APR 1997.* (emphasis added)

**[5]** The express wording as contained under s. 44(1)(a)(iii) of the ACA 1997 therein clearly stipulates that no witness shall be regarded as an accomplice by reason only of such witness having, among others, been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence. It is my view that s. 44(1)(a)(iii) of the ACA 1997 is to be read disjunctively as another stand alone circumstance when a witness shall not be regarded as an accomplice. Although I noted that the learned judge in the *Dato' Azman Mahalan*'s case *(supra)* did refer to s. 44 of the ACA 1997 he did not articulate his argument on its application with any specific reference to s. 44(1)(a)(iii) therein. Had his Lordship done that, he might not have occasion to say, at p. 507 as follows:

> In fact, the learned Sessions Court Judge ought to have found that **PW1 had exceeded** the role of a witness to be protected under section 44(1)(a) of the 1997 Act and instead **ought to have found PW1 as an accomplice as defined by law**. (emphasis is added)

**[6]** With respect, I agree with the decision in the *Rahiman*'s case *(supra)* pertaining to the learned judge's interpretation of s. 44 of the ACA 1997, in particular, his articulation on true import of s. 44(1)(a)(iii) of the same the clear intent of the Parliament in introducing this amendment in 1997 must be given its due effect accordingly. The opening words employed by the drafters in couching the said section could not be more clear for it says as follows: "44(1) Notwithstanding any written law or rule of law to the contrary, ..." As such, I agree with Justice Ahmad Maarof's conclusion in the *Rahiman*'s case *(supra)* that howsoever a witness is involved in the commission of a crime under the ACA 1997 he

A can never be regarded as an accomplice. The issue of a witness exceeding or playing the infamous role to profile an accomplice in a corruption charge under the ACA 1997 does not arise anymore.

**[7]** Having said that, the learned judge in the *Rahiman*'s case *(supra)* explained how the evidence of a witness who in the previous B scheme of things would have been an accomplice, now ought to be treated, as follows:

> Keterangannya hendaklah dipertimbangkan seperti saksi-saksi biasa lain. Seperti juga keterangan saksi-saksi biasa yang lain, di dalam C menerima atau menolak keterangan SP1, Mahkamah perlu menilai dengan teliti betapa konsistennya keterangan SP1 itu ...

**[8]** His Lordship cited the case of *PP v. Dato' Seri Anwar Ibrahim (No 3)* [1999] 2 CLJ 215 as an authority to show how the evidence D of a normal a witness ought to be appreciated. In other words, although a witness in a case involving a charge under the ACA 1997 is shown to have participated in the commission of the very same criminal conduct with which an accused person is being tried in court, that witness cannot be treated as an accomplice by virtue E of s. 44(1)(a)(iii) ACA 1997. However, that in itself does not mean or rather ought not to be taken to mean that the court is now under no obligation to weigh his evidence with care. What it does mean is that the evidence of such a witness ought to be given the amount of scrutiny depending upon the peculiar set of F circumstances presented to the court depending on the contents of his evidence and its nature in relation to its own context and in relation to the evidence of other witness[es].

**[9]** Looking at the grounds of decision of the SCJ it is clear that she had not made any finding that the SP4 was an accomplice. G Based on that decision in *PP v. Rahiman (supra)*, it would appear that SP4 can never be an accomplice, and therefore his evidence did not need any corroboration. In that regard, I do not think the SCJ can be faulted for not having found SP4 as an accomplice. From the evidence in this case, it is apparent that SP4 was a trap H witness as envisaged under the above-quoted s. 44(1)(b) ACA 1997 and by virtue of that provision he ought not to be viewed as unworthy of credit merely on account of his having attempted to commit, or to abet, having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of I such attempt, abetment or engagement was to secure evidence

against such person. Read in the context of s. 44(1)(a)(iii) of the PCA 1997 although SP4 was a trap witness, he was not an accomplice.

**[10]** It now becomes incumbent on this court to see whether the SCJ had properly appreciated the evidence of SP4 and the rest of the evidence adduced by the prosecution before she could found a *prima facie* case having been established and whether the defence had been properly appreciated before she had found this appellant guilty and then proceeding to convict him. An appeal is essentially a "continuation of a trial and throws open all the evidence to a re-examination in order to determine whether or not the various findings by the court are correct." as decided by Abdul Hamid J (as he then was) in the case of *PP v. Ma'arif* [1969] 1 LNS 134.

**[11]** Apart from raising the issue of the status of SP4 as an accomplice the learned counsel had also raised the following issues:

(i) on the transcript of the tape-recording. (ID19) of the alleged conversation between the appellant and SP4 prior to the former's arrest by the ACA officers. The attack pertaining to this matter had been 2-prong but quite related to the accomplice issue. According to learned counsel, ID19 would have been an independent source of corroboration of the SP4's evidence but it was never tendered as an exhibit by the prosecution. As a result, the learned counsel had submitted that there was no corroboration of SP4's evidence and that adverse inference under s. 114(g) of the Evidence Act 1950 should be invoked and be drawn against the prosecution for failure to adduce ID19 as evidence. In the light of s. 44 ACA 1997 SP4 could not be an accomplice and as such his evidence does not under the law require to be corroborated. As regards the invocation of adverse inference against the prosecution under s. 114(g) Evidence Act 1950, although ID19 might as well be material evidence, there is no evidence of the prosecution suppressing its admission as part of its evidence. In fact, from the Record of Appeal it was introduced as an ID but was never tendered on the ground that its quality was suspect and the prosecution therefore abandoned its attempt to make it as prosecution exhibit. To my mind, that was an appropriate step to take under the circumstances pertaining to its doubtful quality. In order for an adverse inference to be drawn against a party, there must be shown evidence of suppression of the material evidence by that party (*Munusamy Vengadasalam v. PP*

A [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 (SC)) In this case, no such evidence of suppression existed. Instead from the Record of Appeal, it was the defence who had objected to its introduction, for instance, see p. 53 therein. As such, there was no suppression of evidence by the prosecution and no
B presumption of adverse inference presumption against it under s. 114(g) of the Evidence Act 1950 ought to be invoked. As the ID19 was not part of the prosecution evidence, the SCJ was correct in not referring to it in her judgment let alone act on it. (see the decision of Abdoolcader J (as he then was) in *PP v.*
C *Datuk Hj Harun Hj Idris & Ors* [1977] 1 LNS 92) As to ID19 as a necessary piece of corroborative evidence, it is my considered view that in the light of the status of SP4 not being an accomplice, such argument cannot now be sustained. So, this ground as raised by the appellant cannot succeed.

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(ii) It was also submitted that there was a failure on the part of the SCJ to judicially appreciate the evidence of the SP4. I had perused the grounds of decision of the SCJ and she had amply considered the evidence of SP4 in coming to the finding that
E the appellant in this case had accepted the money from the SP4 in order that he refrained from taking action against SP4. She had made a finding on that fact and there is no reason for me to disturb her finding as such finding had been supported by evidence before her. A perusal of the evidence of SP4 had
F shown on 4 August 1998 that the appellant had called him to see him at his office where SP4 was told that he had about RM60,000 worth of back taxes that he had to pay. Later on in the evening, the appellant called SP4 again and told him that SP4 could pay him about RM6,000 to RM10,000 to settle the
G matter and that SP4 had to pay the sum quickly. According to SP4 he had not got such amount of money to pay at short notice. The next day SP4 went to the ACA office at Jalan Duta where he had met with En. Yusof bin Mohd. Zain (SP5) and then had lodged a report (P13) against Raman, the appellant
H for asking 'wang kopi' from him to settle the back taxes. According to the SP4 the appellant called again the next day asking for money from him. SP4 said, at p. 51 in the Record of Appeal:

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> Keesokan harinya, panggilan daripada Encik Raman [OKT/appellant] minta wang lagi. Encik Raman kata nak selesaikan kes saya. Minta saya bayar wang dengan cepat.

The SP4 said that he did not have the money and that they needed to discuss the matter further. A meeting was agreed between them at a restaurant next to Maybank and Oriental Bank at Klang to be held the next day. Meanwhile, the SP4 called En. Yusof of the ACA and a trap was set and the SP4 was given marked money in the amount of RM2,000 by En. Yusof, to be handed to the appellant during prearranged their meeting at Klang. Later on in his evidence, the SP4 said:

> Ya, saya ada berikan RM2,000 kepada OKT. RM2,000 adalah supaya tindakan tidak diambil. Tindakan. Tindakan ke atas saya kerana bayaran cukai tidak cukup untuk tahun-tahun yang lepas.

SP4 also specifically denied that the RM2,000 was paid to the appellant for his work done on tax matters on behalf of the SP4. At p. 63, SP4 had said:

> Tidak, bayaran RM2,000 bukan sebagai upah kepada OKT untuk kerja-kerja beliau mengira cukai pendapatan saya.

When cross-examined on this matter, SP4 said at page 68 of Record of Appeal:

> Saya tidak panggil Multi Tax company untuk membuat pengiraan cukai saya.

And at p. 70 of the Record of Appeal, SP4 was asked by learned counsel thus:

> Q: Apakah hasrat berada di restoren tersebut?

and SP4 had said in response thereto:

> Semasa di restoren hasrat pergi ke sana adalah kerana OKT menyuruh saya menyerahkan wang untuk elakkan tindakan.

The Record of Appeal does show that this witness (SP4) was repeatedly prodded that he had appointed Multi Tax as his tax consultant and that the RM2,000 was paid as retention fee for such service but the witness had stood his ground and categorically denied the same. There was no hesitation shown in his consistent answers on this issue. Indeed the last question asked by the learned counsel had gone like so:

> Q: Saya katakan OKT tidak pada bila-bila masa minta atau menerima wang rasuah daripada awak. Setuju atau tidak?

The answer given by the SP4 was:

> A: OKT ada minta wang daripada saya.

The evidence of SP4 as to what had happened regarding the bribe was echoed by the evidence of SP12 (Lee Long How), for instance at p. 127 record of Appeal:

> Q: Saya cadangkan OKT tidak pernah meminta wang rasuah daripada SP4 pada petang itu.
>
> A: Saya tidak setuju. Dia memang ada minta. see page 76 Record of Appeal]

During examination-in-chief SP4 had said:

> Saya keluarkan RM2,000 kepada Encik Raman pada masa itu ketika di restoren. OKT masuk ke dalam poket.

It was also put to SP4 that the appellant had brought along with him two Multi Tax files or empty folders during the meeting with the SP4 at the restaurant at Klang to which SP4 had said he did not see any files nor did the appellant show any file to him. If the appellant had brought two files or empty folders I could not see any probable reason why he had to do the tax calculation on the miserable pieces of tissue paper that were marked as P16 (A & B) during the trial. As SP4 was not an accomplice, there was no need for the SCJ to warn herself of the danger of convicting on uncorroborated evidence. In the light of the interpretation made on s. 44(1) ACA 1997 that issue does not arise. SP4 was a trap witness (s. 44(2) ACA 1997 applies to him) an agent provocateur whose evidence regarding the accepting of the RM2,000 as such bribe from SP4 was witnessed by SP12. By virtue of s. 44(1)(a)(iii) of the ACA 1997 SP4 could not be regarded as an accomplice. I have perused through the decision of the SCJ and I noted that she had evaluated the evidence of SP4 just as any court would in appreciating his evidence like the evidence any other witnesses, in its totality and in relation to the evidence of other witnesses in this case and she having so acted she was satisfied that there was *prima facie* case had been established against the appellant. Based on that premise she had then called for defence to be entered by the appellant. I do not find any reason to disturb her findings in that regard. There was ample evidence to conclude that the appellant had asked for a bribe from SP4 so

that no action would be taken against SP4 in respect of his back taxes. It is clear that SP4 had been a consistent witness who had not wavered on his evidence regarding the material issues pertaining to the charge preferred against the appellant. I agree with the submission of the learned Ms Deputy there was ample evidence to sustain the conviction against this appellant regardless of the fact that ID19 (transcript of tape-recording) was not produced by the prosecution. The SCJ had the opportunity of seeing and observing how SP4 had performed in her court and had been impressed by his performance and she had acted on his evidence accordingly. The SCJ was therefore correct in calling the appellant to enter on his defence on account of the available evidence before her as a *prima facie* case had been established against the appellant. There is no reason why I should interfere with such finding by the SCJ. As such I cannot sustain the appellant's objection on that score.

(iii) It was alleged too by the learned counsel that the investigation was sloppy in that it did not investigate the various facts which according to the appellant if investigated into would have gone some way towards exonerating him. Most of these related to his employment as a part-time consultant with a firm called Multi-tax. Whether a matter ought to be investigated would depend on the circumstances obtaining before an investigator. Having regards to the circumstances in this case which involved entrapment and use of trap witness as well as witness from the ACA itself (SP12), the scope of the investigation could be readily determined. In the light of what SP4 had said, there was no need to go into investigating into the appellant's part-time employment. In the context of the factual matrix in this case, the fact that the appellant could well be employed part-time by Multi Tax company would not have mattered in the overall nature of the prosecution' case. SP4 himself had denied that the appellant had ever told him that he was employed by Multi Tax and he had denied that he had ever appointed Multi Tax as his tax consultant and that the RM2,000 (P14) that he had given to the appellant had been for work done by Multi Tax or as retention fee for its future services on SP4's tax affairs. In other words, the probable defence of the appellant had been rebutted by the evidence of SP4. The marked monies (P14) had been handed over to the appellant and in the light of evidence of SP4 and SP12 the investigator was justified in not pursuing

A the line of investigations as proposed by the learned counsel. As long as the result of the investigations as revealed in the trial in the form of evidence adduced did not leave a material gap, which amounts to creating a reasonable doubt in the prosecution's case, the investigator would have been vindicated. B In this case, such had been the case. This ground of appeal also cannot succeed.

(iv) The appellant had also complained that the SCJ had not appreciated the evidence of the defence that could be favourable C to him that could have raised a doubt in the case for the prosecution. I had seen the Record of Appeal on how she had treated the appellant's defence and I find no cause to interfere with her findings. She had weighed the evidence of this appellant on the issue of the purpose of him receiving the D RM2K. It was her finding of fact that it was accepted by this appellant as a bribe so that no action would be taken against SP4 for the purported non-payment by SP4 of back arrears in tax for a number of years. She found that the appellant had failed to raise any reasonable doubt on the prosecution's case. E Looking at the grounds, the SCJ had devoted a substantial amount of her findings on the appreciation of the defence's evidence and concluded that taken as a whole, such evidence had not raised a reasonable doubt on the prosecution's case. She had found the SP4 to be a truthful witness and that the F evidence led by the defence had been such that it was incapable of raising a reasonable doubt on the prosecution's case. In a criminal trial, where at the end the day the court has to decide on the two versions that have been presented before it, the proper step to be adopted by the court would be to decide G whether the version as presented by the accused person has succeeded in creating a reasonable on the prosecution's case. The SCJ in this case had done just that and she had found that the appellant had failed so to do. I find nothing wrong with that approach and her various appraisals and conclusions H regarding the unreasonable nature of the appellant's evidence. I also agree with her ultimate conclusion in this case.

(v) As regards the issue of whether the appellant had allegedly told the SP4 and SP12 the following:

I I can't do anything against the law. You must understand my situation.

The SP12 had answered that he could not recall having heard that coming from the appellant during the meeting. (see p. 126 record of Appeal) As a result of such answer as given by SP12 it was submitted by the appellant that it was not conclusively established that the appellant could do an illegal act under the circumstances. Suffice to say I found it to be rather unusual that SP4 was never confronted with this question by learned counsel when he cross-examined SP4. If anybody connected with this case should be asked this question at all it must be SP4. But for reason(s) best known to the appellant, SP4 was not so confronted but instead it was SP12 who was so asked. The fact that SP12 could not answer that question emphatically one way or the other does not mean the appellant could not have committed the offence because the determination of that crucial issue could also be based on the other available evidence before the court either directly or by way of inferences from circumstances.

(vi) It was also raised before me that the grounds of decision were given by judge after 22 months had lapsed after the decision was handed down in this case. Learned counsel had cited the case of *Tan Hun Wah v. PP & Another Appeal* [1994] 2 CLJ 180 among others, and submitted that such delay had prejudiced the appellant. The learned Ms Deputy had cited in reply the case of *Amathevelli R Ramasamy v. PP* [2008] 4 CLJ 413. In that case, it was held by the Court of Appeal that though the delay was regrettable, one has also to look at whether the appellant was prejudiced by such delay as could be detected from the judgment and that there ought not to be an automatic and outright acquittal just on account of such delay. In that case, the Court of Appeal proceeded to hear the appeal on its merits and on the facts, upheld the decision of the trial court. In the appeal before me, I had looked at the judgment as a whole and I had found that the judgment had encapsulated the essential features of the case sufficiently. Though there existed these apparent missteps in the said judgment as indicated by the learned counsel, nevertheless they did not prejudice the accused person. As an illustration, the learned counsel had adverted to the fact that the SCJ did not rule that the relevant presumption under s. 42 ACA 1997 had been invoked in this case and that had she done that, he had submitted that the burden on the appellant would have been:

A "hanya perlu mematahkan kes pendakwaan atas imbangan kebarangkalian sahaja" instead of "mewujudkan keraguan". (see page 23 'Hujahan Perayu' marked "A1")

Actually, the burden of raising a reasonable doubt is the lighter of the two burdens and is more favourable to the appellant. (see the decision of Azmi SCJ in the case of *Mohamad Radhi Yaakob v. PP* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC) In this case, the evidence on the purpose why the appellant had accepted the RM2,000 from SP4 could be readily inferred from the available evidence and as such an invocation of the presumption would have been redundant. Looking at how this issue was postulated by the appellant and from a perusal of the grounds of decision of the SCJ, it is noted that she had not at any time subject this appellant to the higher burden of proof in coming to her finding that the appellant had failed to raise a reasonable doubt on the case for the prosecution. She had not considered the appellant's evidence from the higher benchmark of rebutting the prosecution case on the balance of probabilities. In other words, if the SCJ had indeed erred in not invoking the presumption, she had erred in favour of the appellant, in that the consequential burden as a result thereof that had rested on the shoulder of the appellant had been the lighter one namely one of merely raising a reasonable doubt on the prosecution case. It was also complained by the appellant in his submission that the SCJ did not mention that the prosecution had established a case beyond reasonable doubt against the appellant in her grounds. Actually, looking at her grounds at p. 256 in the Record of Appeal the SCJ had said as follows:

> Pembelaan telah gagal wujudkan keraguan ke atas kes pendakwaan, ...

and that ought to be read together in tandem with her decision delivered on 2 August 2005 at p. 238 of the Record of Appeal where she had said:

> Pihak Pendakwaan telah berjaya membuktikan kes tanpa keraguan munasabah bahawa OKT telah melakukan kesalahan seperti di dalam pertuduhan ... .

Therefore there has not been any prejudice occasioned by the apparent delay to the appellant in this instance. As such, I therefore did not see any merit in this argument as raised by the appellant.

**[12]** Having considered the submissions by both parties and looking at the evidence in its totality, I am of the view that this appeal cannot succeed. I have not found any justification for this court to set aside the conviction so entered against this appellant.

**[13]** As regards the appeal against the sentence imposed, I have noted that before passing the sentence, the SCJ had considered the circumstances of the case in the light of the principles on sentencing. I agree with the SCJ that a custodial sentence was in order for this kind of offence apart from the imposition of a fine. Under the circumstances the sentence so imposed by her was not manifestly excessive. I would therefore affirm the sentence as well. In the upshot, the appeal by the appellant against both conviction and sentence is hereby dismissed.